COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 1465 of 2001

Yogendra Singh. … **Appellant.**

Versus

Khem Singh
and another. ... **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award dated 8-2-2002 passed in M.A.C. T. Petition No. 63 of 1999, Yogendra Singh vs. Khemraj Singh and another, by Motor Accident Claims Tribunal/District Judge, Uttarkashi ***(in short the Tribunal),*** whereby the learned Tribunal has allowed the claim petition and has awarded Rs. 26,000/- as compensation in favour of the claimant-appellant under Section 166 of the Act and against the O.P.No.2/respondent no. 2. Aggrieved, the claimant-appellant has come up in appeal with a prayer that the compensation amount is inadequate on the ground that the learned Tribunal has failed to appreciate the evidence and the findings of the learned Tribunal are erroneous.

Facts of the case, in brief, are that claimant-appellant preferred a claim petition before the learned Tribunal, under Section 166 of the Act for the injuries sustained by him in a motor accident on 21.3.1999 with the allegations that on 21.3.1999, he was travelling by bus No. DEG-5818 under the employment of O.P.-respondent no.1 as additional driver and was driving the bus from

Uttarkashi to Rishikesh. The bus was being driven by the O.P.-respondent no.1 and due to rash and negligent driving of the bus, the bus met with an accident near Thandhar and rolled down into the ***Khadd*** with the result the claimant sustained grievous injuries on his body as well as fracture of collar done and ribs. He was rushed to Maseeh Hospital Chamba and subsequently. He was referred to Himalayan Hospital, Jolly Grant, Dehradun and got his treatment there. Hence, the claim petition has been filed claiming Rs. 8,04,000/- as compensation.

Both the opposite parties-respondent nos. 1 and 2 filed their separate written statements and contested the claim petition. O.P.No.1 has admitted that the injured claimant was employed as additional driver and was being paid Rs. 600/- per month as salary. He has however asserted that the accident in question was failures of brakes of the vehicle. O.P.No.2-Insurance Company has challenged the claim petition on the quantum of compensation and has pleaded that the accident was result of mechanical failure of the brakes and not rash and negligent driving.

Learned Tribunal has framed two issues in the case. Issue No. 1 related to rash and negligent driving by the driver of the vehicle involved in the accident resulting into injuries to the claimant-appellant. Issue No.2 related to the relief. The learned Tribunal after hearing both the parties and considering the evidence on record, came to the conclusion that the claimant-appellant sustained injuries as a result of motor accident as alleged by him. After discussing the point of rash and negligent driving or that of mechanical failure of brakes in detail, the learned Tribunal arrived at the conclusion that the accident in question was result of rash and negligence on the part of the owner or driver of the said bus. On Issue No.2, the learned Tribunal before arriving at

the conclusion has closely scrutinized the evidence on the quantum of compensation and has ultimately awarded sum of Rs. 26,000/- in favour of the injured-claimant along with interest at the rate of 9% per annum from the date of filing of petition till date of payment.

We have heard learned counsel for the appellant, Ms. Seema Sirohi, as well as learned counsel for the Insurance Company, Mr. D.K. Sharma, and have carefully gone through the entire material before us as well as the impugned judgment and award.

It has submitted by the learned counsel for the claimant-appellant that the quantum of compensation awarded by the learned Tribunal is insufficient and inadequate and the same is not based on the evidence adduced by the claimant, therefore, prayer to enhance the award has been made. However, nothing could be pointed out to us, so as to hold the findings of the Tribunal on this score as unjust or erroneous. Moreover, it has not been proved on record that the injured-appellant was required to undergo future treatment for the injuries sustained by him. Having gone through the entire evidence on record, we find that all the papers relating to treatment and purchase of medicines **(paper nos. 23-C to 27-C)** and other bills, we find that the total amounts incurred by the claimant-appellant comes to around Rs. 12,000/-. All these papers on record relate to purchase of medicines, expenses incurred on different clinical and pathological examinations, expenses incurred during hospitalization. In our opinion, the learned Tribunal has fairly awarded sum of Rs. 5000/- towards conveyance charges. We also find that the learned Tribunal has also awarded a sum of Rs. 1,000/- towards payment made by the petitioner-appellant for hiring services of another person, though the claimant P.W.1 by his statement

on oath has failed to convince the Tribunal. From a perusal of the impugned judgment and award, it is crystal clear that each and every count has been minutely discussed by the Tribunal, while determining the quantum of award. In the circumstances of the case, we are of the opinion that the sum of Rs. 26,000/- along with interest @ 9% per annum, as awarded by the Tribunal as compensation to the appellant is a just and proper. No illegality or infirmity has been committed by the learned Tribunal. Accordingly, we have no option but to confirm the findings arrived at by the Tribunal in the case under appeal.

Ultimately, the appeal has no force and is liable to be dismissed.

The appeal is dismissed. The findings recorded by the learned Tribunal in the case, appealed against, are upheld. No order as to costs.

19-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP